

### REMARKS

Claims 1-12, 18, and 21-27 are pending. No claims are amended with this response.

The only remaining rejection is a new rejection of claims 1-12, 18, and 21-27 as unpatentable over WO 02/102391 ("Vergnault") (publication of PCT/IB02/03136, "the '136 application") in view of WO 87/02582 ("Ekman") and U.S. Patent No. 5,506,222 ("Stefano") in view of the DrugBank entry for spironolactone. The rejection is traversed.

The subject matter developed in Vergnault and the claimed invention were, at the time the claimed invention was made, subject to an obligation of assignment to the same entity, Jagotec AG. This is evidenced by the assignment of U.S. Serial No. 10/480,573 ("the '573 application") to Jagotec AG recorded at Reel/Frame: 015412/0646 on November 29, 2004. The '573 application is the U.S. National Stage of the '136 application, which is the PCT application that is published as Vergnault. The fact that Vergnault was subject to an obligation of assignment to Jagotec AG is also evidenced by the listing of Jagotec AG on the face of Vergnault as the Applicant for all designated states except the U.S. Assignment of the instant application to Jagotec AG was recorded on November 29, 2006 at Reel/Frame: 18561/0473.

Vergnault qualifies as a reference only under 35 USC § 102(e). Under the provisions of 35 U.S.C. § 103(c)(1), subject matter developed by another, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of 35 U.S.C. § 102, shall not preclude patentability under 35 U.S.C. § 103 where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Accordingly, Vergnault cannot preclude the patentability of the instant application because Vergnault and the claimed invention were, at the time the claimed invention was made, subject to an obligation of assignment to Jagotec, AG.

The remaining references fail to establish a *prima facie* case of obviousness because their combination does not describe or suggest at least a topical nanoparticulate spironolactone formulation comprising nanoparticles of spironolactone incorporated into a crystalline network of polar lipids. Applicants request reconsideration and withdrawal of the rejection.

Applicants submit that the application is in condition for allowance and request an action for same. No fee is believed due in connection with the filing of this response. However, if any additional fee is required, please charge the amount of any such fee, or credit any overpayment of same, to Deposit Account No. 50-0311, Reference No. **28069-608N01US**.

Respectfully submitted,

/Muriel Liberto/

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